

## Message Text

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67

ACTION EA-14

INFO OCT-01 ADP-00 CIAE-00 PM-09 H-02 INR-09 L-03 NSAE-00

NSC-10 PA-03 RSC-01 PRS-01 SS-14 USIA-12 JUSE-00 SY-07

EB-11 RSR-01 /098 W

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R 190820 Z MAR 73

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 3869

INFO SECDEF

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

CG 13 TH AF

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CINCPAC FOR POLAD

E. O. 11652 : GDS

TAGS: MARR, RP

SUBJECT: 1971-72 MBA WORKING GROUP TALKS: REVIEW OF STATUS

OF NON- AGREED ARTICLES: ARTICLE XIII( CRIMINAL JURISDICTION)

REFS: ( A) STATE 137117 DTG 282251 Z JULY 1971

( B) MANILA 7134 DTG 291019 Z JULY 1971

( C) MANILA 8813 DTG 180516 Z SEPT 1971

( D) STATE 188515 DTG 142051 Z OCT 1971

( E) MANILA 9663 DTG 150946 Z OCT 1971

( F) MANILA 10210 DTG 030929 Z NOV 1971

( G) MANILA 11053 DTG 010901 Z DEC 1971

( H) STATE 219664 DTG 061934 Z DEC 1971

( I) MANILA 11409 DTG 130848 Z DEC 1971

( J) STATE 224871 DTG 142241 Z DEC 1971

( K) MANILA 1926 DTG 020907 Z MAR 1971

( L) MANILA 3122 DTG 190724 Z MAR 1973

1. EMBASSY NOTED ITS UNDERSTANDING THAT STATE/ DEFENSE

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WERE AGREED TO MODIFICATION OF ART. XIII IN REF K,  
EXCEPT FOR PARA 1 ( B ) ( INTER SE) AND PARA 1 ( C )  
( OFFICIAL DUTY DETERMINATION).

2. REF D STATES THAT USG POSITION ON PARA 1 ( B ) ( REF A )  
IS THAT WE WILL CONSIDER GIVING PHILS PRIMARY RIGHT TO EXERCISE  
JURISDICTION IN INTER SE CASES INVOLVING CERTAIN OFFENSES  
SOLELY AGAINST PERSONS OR PROPERTY OF DEPENDENTS WHO ARE  
PHILIPPINE NATIONALS AND NOT US NATIONALS OR ORDINARILY  
RESIDENT IN US, PROVIDED: ( A ) ALL DRAFTING PROBLEMS ARE  
RESOLVED, INCLUDING CLARIFICATION THAT SUCH A PROVISION  
WOULD NOT AFFECT US JURISDICTION UNDER SUB- PARAGRAPH 1  
( C ) IN OFFICIAL DUTY CASES; ( B ) AND, FURTHER, ONLY IN  
THE CONTEXT OF A SATISFACTORY RESOLUTION OF ALL REMAINING  
CRIMINAL JURISDICTION ISSUES.

3. RECORD AS SET FORTH IN REFS WOULD SEEM TO INDICATE  
THAT SOME DRAFTING PROBLEMS STILL REMAIN RE PARA 1 ( B )  
AS TO THE DEFINITION OF SERIOUS OFFENSE. ALSO RECENT EMBASSY  
EXPERIENCE INDICATES THAT AN AGREED  
MINUTE OR OTHER CLARIFICATION NEEDS TO BE DEVELOPED TO  
MAKE IT CLEAR THAT PHIL INTERNAL CRIMINAL LAW DOES NOT CONTROL  
THE DEFINITION OF INTER SE CASES. THIS ISSUE NEEDS ATTENTION  
BEFORE US AGREES TO SUCH EXTENSION OF PHIL JURISDICTION.

4. ISSUE OF FINAL DETERMINATION OF OFFICIAL DUTY IS  
ONLY OTHER OUTSTANDING AND NON- AGREED ASPECT OF ARTICLE  
XIII AS CONSIDERED BY ORIGINAL WORKING GROUP. US POSITION  
NOT SUSCEPTIBLE TO CHANGE; PHIL POSITION WAS PREVIOUSLY  
ALSO CAST IN CONCRETE TO EFFECT  
THAT SECRETARY OF JUSTICE SHOULD HAVE FINAL SAY IN  
OFFICIAL DUTY DETERMINATIONS, AS WAS CASE FROM 1947-1965.  
IT EMBASSY JUDGMENT THAT CHANGE IN POLITICAL ATMOSPHERE  
THAT HAS OCCURRED SINCE MARTIAL LAW DECLARATION AND  
APPARENT CONFIDENCE OF SECRETARY OF JUSTICE ABAD SANTOS  
IN INTEGRITY US DUTY DETERMINATIONS MAY HAVE MADE THIS  
ISSUE LESS IMPORTANT FOR NEXT STAGE OF NEGOTIATION. IN  
ANY CASE, THOUGH, PHILS VERY AWARE THERE NO GIVE IN US  
POSITION ON THIS ISSUE, US SHOULD EXPECT PROLONGED FIGHT  
ON DUTY DETERMINATION QUESTION IN RESUMED NEGOTIATION  
BEFORE REACHING AGREEMENT WITH PHILS. OUR BEST HOPE FOR  
REACHING AGREEMENT IS FACT THAT KEY PHIL NEGOTIATORS HAVE  
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MADE THEMSELVES FAMILIAR WITH US SOFA'S ELSEWHERE AND ARE

NOW MORE FAMILIAR WITH ANOMALOUS PHIL POSITION OF INSISTING THAT SECRETARY OF JUSTICE MAKE DUTY DETERMINATIONS. THIS DOES NOT NEGATE THE FACT, HOWEVER, THAT THIS AN EMOTIONAL ISSUE FOR PHILS ( SMITH AND MOOMEY CASES), AND EMBASSY BELIEVES PHIL NEGOTIATORS WILL PERSIST STUBBORNLY IN EFFORT TO REGAIN FINAL SAY IN DUTY DETERMINATION FOR SECRETARY OF JUSTICE. HOWEVER, EXPLICIT TRADE- OFF BETWEEN PARA 1( B) AND 1 ( C) WHICH POSSIBLE, COUPLED WITH ABOVE- NOTED CHANGE IN POLITICAL ATMOSPHERE AND PROMISING START OF CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE, MAY MAKE PHIL APPROACH ON THIS ISSUE PRO FORMA RATHER THAN DO OR DIE.

5. ONE NEW CLAUSE WHICH WASHINGTON MAY WISH TO CONSIDER IN LIGHT OF MARTIAL LAW IS WHETHER SOME TYPE OF SAFEGUARD PROVISION SHOULD BE INCLUDED CONCERNING JURISDICTION WHEN MARTIAL LAW HAS BEEN DECLARED. EMBASSY DOES NOT BELIEVE IT NECESSARY NOR WOULD WE FAVOR A STRONG CLAUSE SUCH AS FOUND IN THE KOREAN SOFA ( AGREED OFFICIAL MINUTES TO ART XVIII RE PARA 1 ( B)) WHICH SUSPENDS THE CRIMINAL PROVISIONS OF SOFA DURING MARTIAL LAW AND GIVES U. S. EXCLUSIVE JURISDICTION. HOWEVER, SOME TYPE OF WORDING MAY BE APPROPRIATE TO INSURE THAT MBA PERSONNEL WOULD ONLY BE TRIED BY REGULAR CONSTITUTED CIVILIAN COURTS UNDER MARTIAL LAW REGIMES AND ONLY IF SUCH COURTS ARE NO LONGER FUNCTIONING WOULD THE CRIMINAL JURISDICTION PROVISION BE SUSPENDED AND U. S. GIVEN EXCLUSIVE JURISDICTION OVER MBA PERSONNEL. IT SHOULD BE STRESSED THAT UNDER PRESENT MARTIAL LAW REGIME WE FORESEE NO REAL DIFFICULTY IN LIGHT OF THE PHILS COOPERATION ( SEE MANILA 10200, 1972 SERIES, THAT REPORTS PHIL AMENDED MARTIAL LAW GENERAL ORDER TO INSURE CIVILIAN COURT JURISDICTION OVER MBA PERSONNEL EXCEPT FOR OFFENSES OF SUBVERSION, REBELLION, SEDITION), BUT THIS COULD CHANGE WITH A DIFFERENT REGIME OR A TURN IN US/ RP RELATIONS. ALSO SUCH A CLAUSE MAY BE HELPFUL IN RELATION TO ANY CONSULTATION WITH THE U. S. SENATE THAT MAY BE NECESSARY. REQUEST WASHINGTON EVALUATION.  
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\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* CONFIDENTIAL

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